

**Supporting Statement for Information Collection Provisions
Contained in the Rules Implementing the
Fair Packaging and Labeling Act
16 C.F.R. Parts 500-503
(OMB Control #: 3084-0110)**

1. Necessity for Collecting the Information

The Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-1461 (“FPLA” or “Act”), was enacted in order to: (1) eliminate consumer confusion in the marketplace; (2) standardize the means used by sellers to disclose package content information to buyers; and (3) eliminate consumer deception and confusion concerning product size representations. In Section 2 of the Act, Congress determined that “[p]ackages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.” 15 U.S.C. § 1451. The Act, in turn, directs the Federal Trade Commission (“FTC” or “Commission”) to issue rules requiring that labels for all “consumer commodities”¹ disclose the package’s net contents, identity of commodity, and name and place of business of the product’s manufacturer, packer, or distributor. The Act authorizes additional rules where necessary to prevent consumer deception (or to facilitate value comparisons) regarding descriptions of ingredients, slack fill of packages, use of “cents-off” or lower price labeling, or characterization of package sizes.

In 1968, the FPLA Rules (16 C.F.R. Parts 500-503) took effect. The FPLA Rules prescribe the manner and form of labeling consumer commodities (as defined in the FPLA) regarding: (1) the identity of the commodity; (2) the name and place of business of the manufacturer, packer, or distributor; (3) the net quantity of contents (in both inch/pound units and metric units); and (4) the net quantity of servings, uses or applications represented to be present. 16 C.F.R. §§ 500.3-500.26. The rules also require sellers that make “cents off,” “introductory offer,” or “economy size” claims to keep records for one year showing compliance with the Act’s requirements for such claims. 16 C.F.R. §§ 502.100-502.102.

The FPLA Rules closely parallel the statute’s requirements, and provide detailed guidance on the manner and form of disclosures the Act requires. The FTC administers the FPLA for “consumer commodities” that are consumed or expended in the household and that are not otherwise excluded from FTC purview. The Food and Drug Administration (“FDA”) administers the FPLA for food, drugs, cosmetics, and medical devices. The U.S. Department of Agriculture is responsible for rules covering meat and poultry products.

¹ “The term consumer commodity or commodity means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.” 16 CFR 500.2(c). For the precise scope of the term’s coverage see 16 CFR 500.2(c); 503.2; 503.5. See also

<http://ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-packaging-labeling-act>.

2. Use of the Information

Consumers use the information required for disclosure by these rules to make informed product value comparisons and purchasing decisions.

3. Consideration to Use Improved Information Technology to Reduce Burden

Firms subject to these rules are free to use improved information disclosure and package printing technologies to reduce the burden of complying. In the many years since the rules took effect, covered businesses have integrated the process of compliance into routine packaging operations. Compliance requirements are reasonably well understood throughout the industry, and formal FTC enforcement actions have not been undertaken. State officials responsible for weights and measures activities play a central role in ensuring consumers receive accurate and complete product disclosure at the point of sale.

Information about consumer commodities is most valuable at the point of sale, and labeling is the method most closely tailored to consumer shopping behavior. As such, providing an option for electronic disclosure in lieu of labeling pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3502 note, is impracticable.

4. Efforts to Identify Duplication/Availability of Similar Information

Although FPLA enforcement involves several agencies (see #1 above), there is no duplication of compliance requirements for any particular product subject to the Act.

5. Efforts to Minimize Burden on Small Businesses

Section 3(a) of the FPLA leaves no discretion for exemption or modification of requirements based on firm size. 15 U.S.C. § 1452. The burden for small businesses is already minimized because the requirements of these rules are limited to information that a company would receive in the ordinary course of business. For the most part, compliance with the FPLA Rules entails no more than affected entities consulting the FTC (and/or company in-house counsel) on an as-needed basis to answer questions they may have to help ensure such compliance.

6. Consequences of Conducting Collection Less Frequently

The statutory framework requiring information disclosure on packages does not provide any basis for reducing the frequency of information disclosure.

7. Circumstances Requiring Collection Inconsistent with Guidelines

The collection of information in these rules is consistent with the OMB guidelines stated in 5 C.F.R. § 1320.5(d)(2).

8. Consultation Outside the Agency

At the FTC, primary responsibility for implementing the FPLA Rules is delegated to the Bureau of Consumer Protection, Division of Enforcement, which has continuous informal contact with industry members who need guidance concerning compliance requirements. Moreover, the Commission systematically reviews its rules to ensure that the rules continue to achieve their intended goals without unduly burdening commerce. These reviews are conducted on a ten-year schedule. In the most recent such review regarding the FPLA Rules, the Commission followed its Notice of Intent to Request Public Comments² with an Advance Notice of Proposed Rulemaking³ and a Notice of Proposed Rulemaking.⁴

Additionally, through its triennial pursuit to renew OMB clearance for the disclosure provisions of the FPLA Rules, the Commission seeks, in accordance with 5 C.F.R. § 1320.8(d), public comment on the practical utility of those provisions, ways to improve the quality, utility, and clarity of required labeling, as well as comments on the accuracy of and methodology underlying the FTC's burden estimates. The Commission sought such comment most recently with its latest PRA clearance request for these rules. See 79 Fed. Reg. 74,722 (December 16, 2014). No relevant comments were received. Consistent with 5 C.F.R. § 1320.12(c), the Commission is doing so again contemporaneous with this submission.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of Sensitive Nature

Not applicable.

² 78 Fed. Reg. 30,798 (May 23, 2013).

³ 79 Fed. Reg. 15,272 (March 19, 2014) (“ANPR”).

⁴ 80 Fed. Reg. 5491 (Feb. 2, 2015). In response to the comments received on the ANPR, the Commission proposed amendments to the FPLA Rules, including modernizing the place-of-business listing requirement to incorporate online resources and eliminating obsolete references to commodities advertised using the terms “cents off,” “introductory offer,” and “economy size.” The Commission also proposed to revise the Rules to incorporate a more comprehensive metric chart. The comment period for the NPRM closes on March 30, 2015.

12. Estimated Information Collection Burden

Estimated annual hours burden: 8,015,140 total burden hours (solely relating to disclosure)⁵

The major information collection burden of the FPLA Rules comes from the Act's consumer commodity labeling requirements. Accurately estimating the number of respondents subject to these rules and annual burden work hours caused by these rules present several challenges. For example, independent data does not tidily conform to the dividing lines of jurisdiction between the FTC and the FDA.

Based on U.S. Census data, however, staff conservatively estimates that approximately 801,514 manufacturers, packagers, distributors, and retailers of consumer commodities⁶ make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 8,015,140 hours.

Associated labor costs: \$185,149,734

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use employees to create compliant labels. Of the 10 hours spent by each respondent, Commission staff assumes the hour breakdown will be as follows: 1 hour of managerial and/or professional time per covered entity, at an hourly wage of \$60,⁷ 2 hours of specialized clerical support, at an hourly wage of

⁵ To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate "cents off," "introductory offer," and/or "economy size" claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates. "Burden," for OMB purposes, excludes recordkeeping customarily maintained in the normal course of business. See 5 C.F.R. § 1320.3(b)(2).

⁶ Commission staff identified categories of entities under its jurisdiction that supply consumer commodities as defined in the FPLA Rules. Those categories include retailers, wholesalers, and manufacturers. Commission staff estimated the number of retailers (735,038) based on Census data (under NAICS subsectors 445, 452, and 453, respectively, for food and beverage stores, general merchandise stores, and miscellaneous store retailers) compiled by PricewaterhouseCoopers, LLC for the National Retail Federation report, "Retail's Impact Across America": <https://nrf.com/advocacy/retails-impact>. Commission staff estimated the number of wholesalers (42,160) and manufacturers (24,316) based on 2007 Census data (comparable 2012 Census data for them have not yet been released). See generally http://www.census.gov/econ/census/data/historical_data.html. Although the stated number of respondents suggests precision, it is an estimate in that it aggregates the number of establishments under industry codes that FTC staff believes reflect entities subject to the FPLA. But, even allowing for industries that may apply, the Census data do not separately break out non-household products from household use. Accordingly, the source information is over-inclusive and thus overstates what is actually subject to the FPLA.

⁷ Based on an average of "General and Operations Managers" (\$55.81) and (\$63.46), resulting in \$59.64, rounded up to \$60, available from "Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013." <http://www.bls.gov/news.release/ocwage.nr0.htm>.

\$26⁸, 7 hours of clerical time per covered entity, at an hourly wage of \$17,⁹ for a total of \$185,149,734 (\$231 blended labor cost per covered entity x 801,514 entities).

13. Estimated Capital/Other Non-Labor Costs

Commission staff believes that the FPLA Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., offices and computers) for the information collections discussed above

14. Estimate of Cost to Federal Government

Staff estimates that a representative year's cost of administering the rules' requirements during the three-year clearance period sought will be approximately \$40,000. This represents attorney and investigator costs, and includes employee benefits.

15. Program Changes or Adjustments

The revised burden hour estimate reflects a decreased number of affected entities, thus accounting for a decrease in cumulative burden hours (the estimate of ten hours per respondent, however, remains unchanged). Estimated labor costs decrease slightly, a reflection of partially offsetting factors of the reduced burden hour estimate paired with updated increases in hourly labor amounts used in staff's calculations.

16. Statistical Use of Information

There are no plans to publish any information for statistical use.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

Not applicable.

⁸ "Specialized clerical support" consists of computer support personnel who design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations. The wage estimate is based on mean hourly wages for "Computer support specialist." See Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013. <http://www.bls.gov/news.release/ocwage.nr0.htm>.

⁹ See *id.* The clerical wage estimate is a rounded average of mean hourly wages for "computer operators" (\$19.25) and "data entry and information processing workers" (\$15.28).